

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX

A.J. MYERS AND SONS, INC.,

Case No. 06-CA-119505

and

AMALGAMATED TRANSIT UNION, LOCAL 1738,  
AFL-CIO, CLC

**RESPONDENT A.J. MYERS AND SONS, INC.'S EXCEPTIONS TO  
THE OCTOBER 3, 2014, DECISION OF ALJ DAVID I. GOLDMAN**

Respondent A.J. Myers and Sons, Inc. (“A.J. Myers”), through its attorneys, files the following Exceptions to the October 3, 2014, Decision (the “Decision”) of ALJ David I. Goldman (the “ALJ”) in which the ALJ found that A.J. Myers violated Sections 8(a)(5) and (1) of the National Labor Relations Act by failing and refusing to recognize and bargain collectively with Petitioner Amalgamated Transit Union Local 1738, AFL-CIO, CLC (the “Union”).

**Exception No. 1** – The ALJ’s finding that A.J. Myers is a successor employer under *NLRB v. Burns Int’l. Security Services, Inc.*, 406 U.S. 272, 92 S.Ct. 1571 (1972), is not supported by substantial evidence. There was insufficient evidence of a “substantial continuity” between the operations of First Student and A.J. Myers for the former First Student employees (who were represented by the Union) that A.J. Myers hired to service the Latrobe School District busing contract. The General Counsel and the Union did not present any evidence concerning how many of the 51 former First Student drivers that A.J. Myers hired actually drove for the Latrobe School District where it was undisputed that the bargaining unit drove for multiple school districts or other third-parties. When considered with the uncontested evidence that the drivers report to different facilities, operate under different management, operate different equipment, and have different working condition, there is no evidence to support the ALJ’s findings that:

- “[T]he unit in question transports the same body of students for the same customer – the Latrobe school district’s students – as did the unit operated by the predecessor First Student.” (Decision (“Dec.”) at 12 (page) : 5-8 (lines)).
- “By all evidence, the employees are doing the same job ... .” (*Id.* at 12:9).
- “[f]rom the employee’s perspective, there is substantial continuity between the old and new employing enterprise.” (*Id.* at 15:33-34).

**Exception No. 2** – The ALJ committed an error of law in holding A.J. Myers’ Latrobe terminal alone is an appropriate bargaining unit, and that drivers at A.J. Myers’ six terminal locations do not share a community of interest. The ALJ erred when he:

- Found that A.J. Myers does not maintain central control of its operations (including the Latrobe terminal) from its Kittanning headquarters. (Dec. 16:36 – 17:19).
- Found that individual terminal managers do their own payroll and purchase their own fleets. (*Id.* at 16:42).
- Cited an advertising brochure as evidence that A.J. Myers does not maintain central control of its operations from its Kittanning headquarters. (*Id.* at 17:4-7).
- Found that the level of interchange between A.J. Myers’ terminals does not support a multi-facility bargaining unit. (*Id.* 17:20- 18:40).
- Failed to consider or apply the other factors considered by the Board when determining if a single-location unit is appropriate (*i.e.*, similarity of employee skills, functions, and working conditions; the distance between the locations; and the bargaining history, if any exists).

Date: October 30, 2014

Respectfully submitted,

METZ LEWIS BRODMAN MUST O’KEEFE LLC

By

  
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Counsel for A.J. Myers and Sons, Inc.

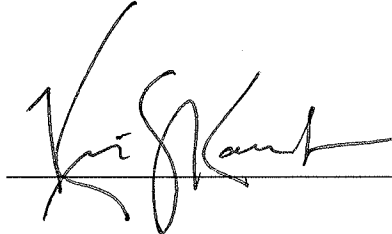
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Exceptions was served on October 30, 2014, by United States mail, first class postage prepaid, at Pittsburgh, Pennsylvania:

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